MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1955 OF 2006

United India Insurance Co.Ltd. Appellant
versus
Smt.Jaherbai Daud Beg & ors. Respondents

Mr.N.Bharathan for appellant.

Mr.Swrang Aradhye i/by R.V.Govilkar for respondents 1 to 5.

Mr.Yadre Bhargavan i/by Bhargavan & Associates for respondent no.7.

CORAM : A.S.OKA, J.

DATE : 09th March 2007

PC :

1. Heard learned advocates for the parties. The appellant Insurance Company has challenged the award made by the Motor Accident Claims Tribunal in a Claim under section 166 of the Motor Vehicles Act, 1988. The appellant was the original opponent no.2. The truck involved in the accident was admittedly insured with the appellant at the relevant time. The appellant has been held jointly and severally liable to pay the compensation to the claimants.

MST

2. The learned advocate appearing for the appellant states that there is nothing on record to show that a leave under section 170 of the said Act of 1988 was applied for and was granted. He also admitted that a defence which is covered by section 149(2) of the said Act of 1988 is not taken. He has placed reliance on a decision of the Apex Court in the case of the United India Insurance Company Vs. Bhushan Sachdeva reported in (2002)2-SCC-265 and submitted that the insurance company was not completely debarred from preferring an appeal in a case where the award is unjust.

3. A Larger Bench of the Apex Court has considered the said decision in the case of National Insurance Company Limited Vs. Nicoletta Rohtagi (2002)7-SCC-456. In paragraph no.23 of the said decision the Apex Court has referred to the aforesaid decision relied upon by the appellant and the Apex Court has expressly held that the said decision does not lay down correct view of the law. The Apex Court in the said case of National Insurance Co. Ltd. (supra) held that right of appeal of the Insurer under section 173 of the said Act of 1988 was a limited right.

MST

4. In this case there is nothing on record to show that a leave under section 170 of the said Act of 1988 was granted and that a ground of defence under section 149(2) of the said Act of 1988 is available to the appellant.

5. Therefore, the appeal is not maintainable at the instance of the appellant insurance company. The appeal is dismissed as not maintainable. The appellant will be entitled to withdraw a sum of Rs.25,000/- (Rs.Twenty five thousand only) deposited in this Court.

6. In view of dismissal of First Appeal, Civil Application No.287 of 2006 does not survive and stands dismissed as such.

(A.S.OKA, J.)